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1 A bill to be entitled

2 An act relating to land trusts; amending s. 689.071, F.S.;
3 creating the Florida Land Trust Act; providing
4 definitions; deleting a requirement that a land trustee be
5 qualified to act as a fiduciary; deleting obsolete
6 references to "dower" and "curtesy"; providing certain
7 rights, liabilities, and duties of land trust
8 beneficiaries; providing that the principal residence of a
9 beneficiary which is held in a land trust may be entitled
10 to the homestead tax exemption; providing for the
11 appointment of successor trustees; providing requirements
12 for declarations of appointment; providing that a trustee
13 of a land trust may also be a creditor of the trust or of
14 a beneficiary of the trust; amending s. 201.02, F.S.,
15 relating to the tax on deeds and other instruments;
16 conforming a cross-reference; providing for applicability
17 of the act to all land trusts whenever created; providing
18 an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Section 689.071, Florida Statutes, is amended to
23 read:

24 689.071 Florida Land Trust Act ~~trusts transferring~~
25 ~~interests in real estate; ownership vests in trustee.--~~

26 (1) SHORT TITLE.--This section may be cited as the "Florida
27 Land Trust Act."

28 (2) DEFINITIONS.--As used in this section, the term:

29 (a) "Beneficial interest" means any interest, vested or

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30 contingent and regardless of how small or minimal such interest
31 may be, in a land trust which is held by a beneficiary.

32 (b) "Beneficiary" means any person or entity having a
33 beneficial interest in a land trust. A trustee may be a
34 beneficiary of the land trust in which such trustee serves as
35 trustee.

36 (c) "Land trust" is not the creation of an entity, but
37 means any express agreement or arrangement whereof a use,
38 confidence, or trust is declared of any land, or of any charge
39 upon land, for the use or benefit of any beneficiary, under which
40 the title to real property, both legal and equitable, is held by
41 a trustee, subject only to the execution of the trust, which may
42 be enforced by the beneficiaries.

43 (d) "Holders of the power of direction" means the persons
44 or entities having the authority to direct the trustee to convey,
45 execute a mortgage, distribute proceeds of sale or financing, and
46 execute documents incidental to the execution of a land trust.

47 (e) "Trustee" means the person or entity designated in a
48 trust instrument to hold legal and equitable title to the land
49 trust property.

50 (3)-(1) OWNERSHIP VESTS IN TRUSTEE.--Every conveyance, deed,
51 mortgage, lease assignment, or other instrument heretofore or
52 hereafter made, hereinafter referred to as "the recorded
53 instrument," transferring any interest in real property in this
54 state, including, but not limited to, a leasehold or mortgagee
55 interest, to any person or to any, corporation, bank, trust
56 company, or other entity duly formed under the laws of its state
57 of qualification ~~qualified to act as a fiduciary in this state,~~
58 in which recorded instrument the person, corporation, bank, trust

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59 company, or other entity is designated "trustee," or "as
60 trustee," without therein naming the beneficiaries of such trust,
61 whether or not reference is made in the recorded instrument to
62 any separate collateral unrecorded declarations or agreements, is
63 effective to vest, and is hereby declared to have vested, in such
64 trustee full rights of ownership over the real property or
65 interest therein, with full power and authority as granted and
66 provided in the recorded instrument to deal in and with the
67 property or interest therein or any part thereof; provided, the
68 recorded instrument confers on the trustee the power and
69 authority ~~either~~ to protect, conserve and to sell, or to lease,
70 or to encumber, or otherwise to manage and dispose of the real
71 property described in the recorded instrument.

72 ~~(4)-(2)~~ NO DUTY TO INQUIRE.--Any grantee, mortgagee, lessee,
73 transferee, assignee, or person obtaining satisfactions or
74 releases or otherwise in any way dealing with the trustee with
75 respect to the real property or any interest therein ~~properties~~
76 held in trust under the recorded instrument, as hereinabove
77 provided ~~for~~, is not obligated to inquire into the identification
78 or status of any named or unnamed beneficiaries, or their heirs
79 or assigns to whom a trustee may be accountable under the terms
80 of the recorded instrument, or under any unrecorded separate
81 declarations or agreements collateral to the recorded instrument,
82 whether or not such declarations or agreements are referred to
83 therein; ~~or~~ to inquire into or ascertain the authority of such
84 trustee to act within and exercise the powers granted under the
85 recorded instrument; ~~or~~ to inquire into the adequacy or
86 disposition of any consideration, if any is paid or delivered to
87 such trustee in connection with any interest so acquired from

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88 such trustee; or to inquire into any of the provisions of any
89 such unrecorded declarations or agreements.

90 (5)-(3) BENEFICIARY CLAIMS.--All persons dealing with the
91 trustee under the recorded instrument as hereinabove provided
92 take any interest transferred by the trustee thereunder, within
93 the power and authority as granted and provided therein, free and
94 clear of the claims of all the named or unnamed beneficiaries of
95 such trust, and of any unrecorded declarations or agreements
96 collateral thereto whether referred to in the recorded instrument
97 or not, and of anyone claiming by, through, or under such
98 beneficiaries. However, this section does not prevent including,
99 ~~and without limiting the foregoing to, any claim arising out of~~
100 ~~any dower or curtesy interest of the spouse of any beneficiary~~
101 ~~thereof; provided, nothing herein contained prevents a~~
102 beneficiary of any such unrecorded collateral declarations or
103 agreements from enforcing the terms thereof against the trustee.

104 (6)-(4) PERSONAL PROPERTY.--In all cases in which the
105 recorded instrument, as hereinabove provided, contains a
106 provision defining and declaring the interests of beneficiaries
107 thereunder to be personal property only, such provision shall be
108 controlling for all purposes when such determination becomes an
109 issue under the laws or in the courts of this state.

110 (7)-(5) TRUSTEE LIABILITY.--In addition to any other
111 limitation on personal liability existing pursuant to statute or
112 otherwise, the provisions of s. 737.306 apply to the trustee of a
113 land trust created pursuant to this section.

114 (8) LAND TRUST BENEFICIARIES.--

115 (a) Except as provided in this section, the beneficiaries
116 of a land trust are not liable, solely by reason of being a

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117 beneficiary, under a judgment, decree, or order of court or in
118 any other manner for a debt, obligation, or liability of the land
119 trust.

120 (b) Any beneficiary acting under the trust agreement of a
121 land trust is not liable to the land trustee or to any other
122 beneficiary for the beneficiary's good-faith reliance on the
123 provisions of the trust agreement.

124 (c) Chapter 679 applies to the perfection of any security
125 interest in a beneficial interest in a land trust. The perfection
126 of a security interest in a beneficial interest in a land trust
127 does not impair or diminish the authority of the trustee under
128 the recorded instrument, and parties dealing with the trustee are
129 not required to inquire into the terms of the unrecorded trust
130 agreement.

131 (d) The beneficiary's duties and liabilities may be
132 expanded or restricted in a trust agreement or beneficiary
133 agreement.

134 (e) Any subsequent document appearing of record in which a
135 beneficiary of a trust transfers or encumbers the beneficial
136 interest in the trust does not diminish or impair the authority
137 of the trustee under the terms of the recorded instrument.
138 Parties dealing with the trustee are not required to inquire into
139 the terms of the unrecorded trust agreement.

140 (f) The unrecorded trust agreement underlying the recorded
141 instrument may provide that one or more persons or entities have
142 the power to direct the trustee to convey, execute a mortgage,
143 distribute proceeds of sale or financing, and execute documents
144 incidental to the land trust. The power of direction, unless
145 provided otherwise in the land trust agreement, is conferred upon

146 the holders thereof for the use and benefit of all of the holders
147 of the beneficial interest in the land trust. In the absence of a
148 provision in the land trust agreement to the contrary, the power
149 of direction shall be in accordance with the percentage of
150 individual ownership. In exercising the power of direction, the
151 holders of the power of direction are presumed to act in a
152 fiduciary capacity for the benefit of all holders of the
153 beneficial interest in the trust, unless otherwise provided in
154 the land trust agreement. The beneficial interest is indefeasible
155 and the power of direction may not be exercised so as to alter,
156 amend, revoke, terminate, defeat, or otherwise affect or change
157 the enjoyment of any beneficial interest.

158 (g) A trust relating to real estate does not fail, and any
159 use relating to real estate may not be defeated, because
160 beneficiaries are not specified by name in the recorded deed of
161 conveyance to the trustee or because duties are not imposed upon
162 the trustee. The power conferred by any recorded deed of
163 conveyance on a trustee to sell, lease, encumber, or otherwise
164 dispose of property therein described is effective and a person
165 dealing with the trustee is not required to inquire any further
166 into the right of the trustee to act and the disposition of any
167 proceeds.

168 (h) The principal residence of a beneficiary may be
169 entitled to the homestead tax exemption even if the homestead is
170 held by a trustee in a land trust.

171 (9) SUCCESSOR TRUSTEE.--

172 (a) The provisions of s. 737.309 regarding the resignation
173 of a trustee do not apply to the appointment of a successor
174 trustee under this section.

175 (b) If both the recorded instrument and the unrecorded land
176 trust agreement are silent as to the appointment of a successor
177 trustee in the event of the death, incapacity, resignation, or
178 termination due to dissolution, of a land trustee, or if a land
179 trustee is unable to serve, then one or more persons or entities
180 having the power of direction of the land trust agreement may
181 appoint a successor or successors to the trust property by filing
182 a declaration of appointment of a successor trustee in the office
183 of the recorder in the county in which the trust property is
184 located. The declaration must be signed by a beneficiary or
185 beneficiaries of the trust and by the successor trustee, must be
186 acknowledged in the manner provided for acknowledgment of deeds,
187 and must contain:

- 188 1. The legal description of the trust property;
- 189 2. The name and address of the former trustee;
- 190 3. The name and address of the successor trustee; and
- 191 4. A statement that the successor trustee has been
192 appointed by one or more persons or entities having the power of
193 direction of the land trust, together with an acceptance of
194 appointment by the successor trustee.

195 (c) If the recorded instrument is silent as to the
196 appointment of a successor trustee but an unrecorded land trust
197 agreement provides for the appointment of a successor trustee in
198 the event of the death, incapacity, resignation, or termination
199 due to dissolution, then upon the appointment of a successor
200 trustee pursuant to the terms of the unrecorded land trust
201 agreement, the successor trustee shall file a declaration of
202 appointment of a successor trustee in the office of the recorder
203 in the county in which the trust property is located. The

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declaration must be signed by both the former trustee and the successor trustee, must be acknowledged in the manner provided for acknowledgment of deeds, and must contain:

1. The legal description of the trust property;
2. The name and address of the former trustee;
3. The name and address of the successor trustee;
4. A statement of resignation by the former trustee and a statement of acceptance of appointment by the successor trustee;
- and
5. A statement that the successor trustee was duly appointed under the terms of the unrecorded land trust agreement.

If the appointment of the successor trustee is due to the death or incapacity of the former trustee, the declaration need not be signed by the former trustee and a copy of the death certificate or a statement that the former trustee is incapacitated or unable to serve must be attached to or included in the declaration, as applicable.

(d) If the recorded instrument provides for the appointment of a successor trustee and a successor trustee is appointed in accordance with the recorded instrument, no additional declarations of appointment of a successor trustee are required under this section.

(e) Each successor land trustee appointed is fully vested with all the estate, properties, rights, powers, trusts, duties, and obligations of the predecessor land trustee, except that the successor land trustee is not under any duty to inquire into the acts or omissions of a predecessor trustee and is not liable for any act or failure to act of a predecessor trustee. A person

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233 dealing with the successor trustee pursuant to a declaration
234 filed under this act is not obligated to inquire into or
235 ascertain the authority of the successor trustee to act within
236 and exercise the powers granted under the recorded instruments or
237 any unrecorded declarations or agreements.

238 (f) A land trust agreement may provide that the trustee,
239 when directed to do so by the beneficiaries of the land trust or
240 their legal representatives, may convey the trust property
241 directly to another trustee on behalf of the beneficiaries or
242 others named by the beneficiaries.

243 (10) TRUSTEE AS CREDITOR.--

244 (a) If a debt is secured by a security interest in a
245 beneficial interest in a land trust or by a mortgage on land
246 trust property, the validity or enforceability of the debt,
247 security interest, or mortgage and the rights, remedies, powers,
248 and duties of the creditor with respect to the debt or the
249 security are not affected by the fact that the creditor and the
250 trustee are the same person or entity, and the creditor may
251 extend credit, obtain such security interest or mortgage, and
252 acquire and deal with the property comprising the security as
253 though the creditor were not the trustee.

254 (b) A trustee of a land trust does not breach a fiduciary
255 duty to the beneficiaries, and it may not be deemed evidence of a
256 breach of any fiduciary duty owed by the trustee to the
257 beneficiaries, for a trustee to be or become a secured or
258 unsecured creditor of the land trust, the beneficiary of the land
259 trust, or a third party whose debt to such creditor is guaranteed
260 by a beneficiary of the land trust.

261 (11) ~~(6)~~ REMEDIAL ACT.--This act is remedial in nature and

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shall be given a liberal interpretation to effectuate the intent and purposes hereinabove expressed.

(12)~~(7)~~ EXCLUSION.--This act does not apply to any deed, mortgage, or other instrument to which s. 689.07 applies.

Section 2. Subsection (4) of section 201.02, Florida Statutes, is amended to read:

201.02 Tax on deeds and other instruments relating to real property or interests in real property.--

(4) The tax imposed by subsection (1) shall also be payable upon documents which convey or transfer, pursuant to s. 689.071, any beneficial interest in lands, tenements, or other real property, or any interest therein, even though such interest may be designated as personal property, notwithstanding the provisions of s. 689.071(6) ~~s. 689.071(4)~~. The tax shall be paid upon execution of any such document.

Section 3. This act is intended to clarify existing law and applies to all land trusts whether created before, on, or after October 1, 2006.

Section 4. This act shall take effect October 1, 2006.